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His offer had contained an old question: What kind of idea are you? *And she, in turn, had offered him an old answer.* I was tempted, but am renewed . . . .

—Salman Rushdie[1]

The epigraph of this Article is taken from Salman Rushdie's marvelous novel, *The Satanic Verses*. It presents one of the important themes of Rushdie's book, that the allure of worldly power or acclaim often induces the sacrifice of fundamental principles. It will be my argument that the temptation to abandon essential values is particularly serious for lawyers because the structure of the law allows them to wield immense power without confronting the injurious consequences of their actions. To address this danger legal education ought to focus on the importance of individual integrity in the courtroom process. Unfortunately, law schools have generally not done so.

The "ordinary religion" of the law school classroom is skeptical, instrumental, and tough-minded.[2] It usually avoids consideration of complex moral questions. Most classes, certainly those in the core curriculum, concentrate on hypotheticals and appellate opinions that have been stripped of serious moral content. This approach deprives law teachers of the opportunity to talk about values and impoverishes legal education.

In order to understand why the absence of moral dialogue from legal education is a serious problem it is necessary to recognize two critical propositions. The first of these was provided by

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1 S. RUSHDIE, THE SATANIC VERSES 500 (1st Am. printing 1989) (emphasis in original indicated above with ordinary roman type).

2 *See* Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 248 (1978).

the social psychologist Stanley Milgram. In the 1960s Dr. Milgram conducted a series of experiments exploring the human inclination to obey authority. Milgram sought to determine whether subjects could be persuaded "to carry out a series of acts that [came] increasingly into conflict with conscience."[3]

The subjects of Milgram's work were told that as part of a study concerning the effects of punishment on learning they were to administer increasingly severe electric shocks to others apparently participating in the exercises. Milgram found that despite the ever more agonized protests of the person seemingly suffering the shocks, about two-thirds of his subjects would continually increase voltage at the direction of a gray-coated experimenter.[4] Milgram concluded that:

> [O]rdinary people, simply doing their jobs, and without any particular hostility on their part, can become agents in a terrible destructive process. Moreover, even when the destructive effects of their work become patently clear, and they are asked to carry out actions incompatible with fundamental standards of morality, relatively few people have the resources needed to resist authority.[5]

The second proposition of importance is drawn from the work of Professor Robert Cover. In an article published shortly after his untimely death, Cover argued that "[l]egal interpretation takes place in a field of pain and death."[6] As Cover demonstrated, what judges do involves the imposition of violence upon litigants. The whole legal endeavor is concerned with the infliction of pain. To recognize this fact is not to concede that such adjudicatory consequences are illegitimate but simply to understand their intrinsically hurtful effect. Unfortunately, the bureaucratic nature of judicial activity often leads judges and lawyers to become insensitive to the suffering they inflict. Because the structure of the legal system usually relieves lawyers from personally experiencing or even witnessing the consequences of their acts "the pain and fear are remote, unreal, and largely unshared."[7] Like the subjects in Milgram's experiments, lawyers feel insulated from the injuries they cause and may "act violently without expe-

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3 S. MILGRAM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW 3 (1974).
4 *Id.* at 35.
5 *Id.* at 6.
6 Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986) (footnote omitted).
7 *Id.* at 1629.

riencing the normal inhibitions."[8] In any such setting the risk of doing unwarranted harm is greatly magnified.

Nothing in traditional legal education prepares students to deal with the erosion of inhibitions. In fact the conventional curriculum and its pedagogy reinforce a set of attitudes that increase the likelihood of dutifully amoral behavior. The practices of the traditional classroom accentuate obedience to authority. The instructor using what law teachers call the "Socratic" method dominates the process, dictating the matters to be discussed and the manner in which they will be considered. The process highlights the teacher's knowledge and the students' ignorance. Challenges to the instructor's authority are not generally encouraged. This arrangement introduces students to a hierarchical structure strikingly similar to the one young lawyers will later encounter in the courtroom.

The conventional curriculum emphasizes the value of abstract rules and discourages reliance on personal values.[9] John Noonan has suggested where this approach leads: "Fascination with rules may mean obeisance to force or the delusion of having mastered force. It may also lead to a veritably religious veneration for the rules and their imagined author. The sovereign and his command may be deified."[10] Such an arrangement increases the risk that those trained in the law will be compliant participants in injurious activities. Noonan says this occurs because lawyers use the rules as an excuse to disregard or "mask" the humanity of those to whom proscriptions are applied.[11]

Traditional legal education has other alienating effects as well. It teaches a skeptical attitude that all too easily leads to a profound nihilism.[12] It encourages an unprincipled instrumentalism that sees everything from a technical perspective.[13] The result is that "students become more isolated, suspicious, and verbally aggressive as they progress through law school."[14]

Unfortunately, neither trial advocacy training by means of simulation nor live client clinical education has been particularly effective at curbing these tendencies or placing critical value ques-

8 *Id.* at 1615.
9 *See* Cramton, *supra* note 2, at 256.
10 J. NOONAN, PERSONS AND MASKS OF THE LAW 13 (1976).
11 *Id.* at 19.
12 *See* Cramton, *supra* note 2, at 253-54.
13 *See id.* at 257-58.
14 *Id.* at 262.

tions on the law school agenda. Simulation training tends to emphasize technique even more than its traditional counterpart.[15] Simulation materials, because of their hypothetical nature, encourage students to adopt a cavalier attitude toward truth and to treat the practice of law as a game.[16] Such attitudes cannot assist students in recognizing, let alone overcoming, the sort of dangers identified by Milgram and Cover.

Clinical education and simulation both rely on a hierarchical approach virtually identical to that used in the traditional classroom. Obedience to directions is strongly stressed.[17] The general tendency of both the clinical and simulation approaches is to "inculcate that spontaneous disposition to conform to occupational norms which is a hallmark of [legal] professionalism."[18] Even putting these issues to one side, clinical experience poses such immediate and urgent demands that, as Noonan says in a somewhat different context, there is great "incentive to disguise, rationalize, or accommodate."[19] Students involved in the clinical experience are not likely to find any answers to their sense of alienation or substantial encouragement to resist pressures to conform to bureaucratic expectations.[20] William Simon found that clinical students were imprisoned rather than liberated by their experience. The students he observed had "both an acute consciousness of the lawyer role as frightening and personally oppressive and a complete inability to envision any alternative to it besides moral and social anarchy."[21]

How should we respond to the problems of alienation from values and willingness to do evil? It is precisely these questions that Salman Rushdie set out to address in his novel. *The Satanic Verses* "is the story of two painfully divided selves."[22] The first is Saladin Chamcha, a secular man who has lost his social moorings

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15 *See generally* Hegland, *Moral Dilemmas in Teaching Trial Advocacy*, 32 J. LEGAL EDUC. 69, 72 (1982); Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. LEGAL EDUC. 123 (1987).

16 *See* Hegland, *supra* note 15, at 72.

17 *See* Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 53-59 (1986).

18 Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 526 (1980).

19 J. NOONAN, supra note 10, at 38.

20 *See* Simon, *supra* note 18, at 538.

21 *Id.*

22 Rushdie, *In Good Faith*, NEWSWEEK, Feb. 12, 1990, at 53 (in this piece Rushdie provides a lengthy description, analysis, and defense of his novel).

and is torn between the culture of his birthplace, Bombay, and his chosen home, London. Chamcha struggles to integrate the two sets of values (South Asian and English) that define his life. His alienation from both worlds is made wonderfully tangible by Rushdie in the early part of *The Satanic Verses* when Chamcha is transformed into a goat-footed, horned devil who is held prisoner in a British sanatorium filled with monstrously chimerical creatures, all of whom have been "demonized by the 'host culture's' attitude to them."[23] This image captures the terrible alienating power of a society to divide people against themselves and the limits of human ability to overcome alienation. Chamcha eventually escapes the sanatorium. After great turmoil and violent infliction of serious injury on those around him Chamcha begins to reintegrate his life. Rushdie argues that for Chamcha to succeed he must come to terms with the demonic version of himself. He is not free simply to adopt the accents and ways of his new home.[24]

The second character of critical importance to *The Satanic Verses* is Gibreel Farishta ("Gabriel Angel").[25] He suffers from "a rift in the soul," a loss of religious faith despite "his immense need to believe."[26] His dilemma is dramatized in a series of dreams that he finds "agonizingly painful."[27] These dreams present a caricature of various aspects of the early history of Islam. At the heart of the dreams is an incident Rushdie describes as "quasi-historical" in which the dream version of Mohammed, named Mahound, is briefly tempted to admit three female pagan gods into the Islamic pantheon.[28] The temptation is embodied in a set of "satanic verses" of scripture which exert a powerful pull on Mahound. If Mahound embraces the satanic scriptures he may advance his worldly program. Mahound resists this temptation but Farishta, the dreamer, cannot come to terms with his loss of faith and is eventually destroyed. To look forthrightly at the satanic

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23 *Id.* at 54.

24 Rushdie vividly describes this by having Chamcha begin the novel as an actor who is particularly adept at mimicking all sorts of English accents. As his personal crisis deepens the accents and words of his native India intrude and must be consciously reintegrated into his speech.

25 Rushdie, *supra* note 22, at 53.

26 *Id.*

27 *Id.*

28 *Id.* at 54.

text and overcome the temptation it represents is critical to "reclamation."[29]

The Satanic Verses argues that in order for a person to live a decent life he must recognize and master the demon that society would make of him. The novel's main characters are placed, at least metaphorically, in positions not unlike the ones young lawyers are likely to face. Educators will find that following Rushdie's paradigm by identifying legal temptation and teaching students how to face it is no simple matter. As *The Satanic Verses* eloquently demonstrates, tangible embodiments of temptation are most likely to facilitate the process. For lawyers there would seem to be no better embodiments of temptation than satanic *cases*. Satanic cases are legal proceedings which graphically present the moral risks lawyers face. An appropriate place to begin looking for such cases is in the annals of famous trials.[30] Here one may find the sorts of real world stories that embody both temptation and resistance.

A number of legal writers have championed the didactic potential of real case stories or narratives. Robert Cover has suggested that "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."[31] In such fundamental narratives, "the trajectories" of experience are plotted.[32] Through them the meanings and implications of legal behavior and the myths which define the parameters of that behavior may be traced. All narratives are not equally valuable in this quest, but the truly paradigmatic may capture our "reality" and "vision."[33] Such narratives provide the "models through which we study," in simplified form, the implications of our actions and our laws.[34] Cover finds them in a number of places but most particularly in case studies,[35] especially those concerning "martyrdom."[36]

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29 *Id.*

30 *See* Twining, *Cannibalism and Legal Literature*, 6 OXFORD J. LEGAL STUD. 423, 425 (1986).

31 Cover, *The Supreme Court, 1982 Term–Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 4 (1983).

32 *Id.* at 5.

33 *Id.* at 9-10.

34 *Id.* at 10.

35 *Id. See also* R. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS (1975).

36 *See* Cover, *supra* note 6, at 1604-05.

John Noonan also emphasizes the value of case studies. He has argued that perhaps as much as half of all legal education should concentrate on the stories behind legal disputes.[37] He has urged this approach because he believes that only in the study of the persons and actions behind legal opinions may we glimpse the human reality of the law. According to Noonan, taking rules and decisions at face value perpetuates the masks that the law often creates. Noonan contends that the law creates these masks to hide the harmful human consequences of its actions. Only if the masks are pulled away, and the historical reality of legal action is exposed, can a better understanding be achieved. Exploring the cases in this manner may serve a critical "heuristic" function, if those who study such cases can avoid "despair or terror" at what they find.[38] Studying the cases this way may awaken a recognition of the "evil" that law can do and "improve our present vision."[39]

Finding the sort of cases that will reward such study is a complicated undertaking. The solution is not found in simply selecting the very worst possible adjudicatory behavior. The most terrible cases, like the purge trials instigated by Stalin in the 1930s,[40] teach very little, except that trials, like any other human activity, may be turned into murderous charades. This lesson neither requires deep analysis nor provides great insight. Instead, these cases are likely to cause the sort of "despair or terror" Noonan warns against.

In *Justice Accused*, a powerful study of the impact of abolitionist sentiment upon the judicial process, Cover suggests that the most didactically useful courtroom confrontations are those in which two elements are present. The first is a substantial divergence between legal principles and felt moral norms.[41] The second is a "dialectical environment" in which judges are pulled in several directions by the ideological tenor of the advocacy used in the cases before them, the potential for extralegal consequences (like civil disobedience), and the sympathetic character of the

37 *See* Noonan, *Cannibalism and the Common Law*, 63 TEXAS L. REV. 749, 752 (1984).

38 J. NOONAN, supra note 10, at 28. For Noonan's discussion of masks, see generally *id.* at 3-28.

39 *Id.* at 28.

40 *See generally* R. CONQUEST, THE GREAT TERROR: STALIN'S PURGE OF THE THIRTIES (1968).

41 *See* R. COVER, *supra* note 35, at 201-10.

subjects of judicial action.[42] Cover's categories are designed to explore why and how certain legal adjudications in the abolitionist struggle led to a crisis of judicial conscience in America in the 1850s and 1860s. The categories may, nonetheless, also provide some guidelines that help identify the sorts of cases, from any era, that dramatically pose questions about legal morality and the proper limits of authority.

As Cover emphasizes, the appropriate cases present a test of moral will. They embody a conflict between a personal sense of justice or decency and a set of discordant social demands. Quite frequently the social demands arise out of a cluster of biases or prejudices held by an elite or majority, willing to sacrifice individual defendants in the name of some allegedly greater social good. Going a step beyond Cover, it may be fair to say that the essence of such cases is their dialectical nature which embodies a contest between social prejudice and personal conscience. Lionel Trilling has advanced an almost identical proposition about the work of certain artists. He has argued:

> A culture is not a flow, nor even a confluence; the form of its existence is struggle, or at least debate—it is nothing if not a dialectic. And in any culture there are likely to be certain artists who contain a large part of the dialectic within themselves, their meaning and power lying in their contradictions; they contain within themselves, it may be said, the very essence of the culture, and the sign of this is that they do not submit to serve the ends of any one ideological group or tendency.[43]

The slave cases Cover analyzed have this dialectical quality. By studying them one may gain profound insights about society's inclination to dictate injurious and morally dubious results in the name of social objectives like obedience to law and political harmony. Yet those who act in such cases are often keenly aware of the injustice, even martyrdom, they impose and the cases frequently provide, albeit at tragic cost, a demonstration of the wrongheadedness of prevailing social attitudes.

Such cases, which might be described as embodiments of the satanic urge in the law, are to be found in almost every era in American legal history.[44] A brief description of two such cases

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42 *See id.* at 211-16.

43 L. TRILLING, *Reality in America*, in THE LIBERAL IMAGINATION: ESSAYS ON LITERATURE AND SOCIETY 9 (1950).

44 Of course such cases may be found in the legal history of other countries as

follows. Nicola Sacco and Bartolomeo Vanzetti were executed on August 22, 1927, for allegedly having robbed and killed a shoe company paymaster and guard in South Braintree, Massachusetts, on April 15, 1921.[45] Sacco and Vanzetti, both immigrants, anarchists, and draft resisters, were tried in a period when these characteristics provoked exceedingly hostile reactions from press, police, and public. The judge who tried the men, Webster Thayer, repeatedly demonstrated the strongest animosity towards them. Their radicalism, draft resistance, and Italian ancestry were all made focal points of the trial by a prosecution that arranged for the presentation of misleading, perhaps perjured, testimony.[46] The jury that heard the case was exclusively American-born and Protestant. It included at least one member who declared before the trial that Sacco and Vanzetti should be hanged.[47] Not surprisingly, the convictions and executions were widely viewed as the product of Massachusetts' desire to "get" these foreign radicals.

Yet the case became a focal point of dialectical conflict within Massachusetts and American society. On one hand, many of those involved seemed bent on securing the state against the "red menace," no matter what the cost. In contrast, many others saw the case as a gross affront to notions of decency and fair play. The

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well. *See, e.g.*, J.-D. BREDIN, THE AFFAIR: THE CASE OF ALFRED DREYFUS (1983) (French miscarriage of justice involving Jewish military officer); C. MULLIN, ERROR OF JUDGMENT: THE BIRMINGHAM BOMBINGS (1986) (British miscarriage of justice involving Irish workers accused of IRA bombings); A. NOYES, THE ACCUSING GHOST OR JUSTICE FOR CASEMENT (1957) (British miscarriage of justice involving distinguished Irish nationalist accused of treason during First World War).

45 My description of the Sacco-Vanzetti case is based upon the following sources unless otherwise indicated: F. FRANKFURTER, THE CASE OF SACCO AND VANZETTI (1927); L. JOUGHIN & E. MORGAN, THE LEGACY OF SACCO AND VANZETTI (1948); F. RUSSELL, TRAGEDY IN DEDHAM (1962); W. YOUNG & D. KAISER, POSTMORTEM: NEW EVIDENCE IN THE CASE OF SACCO AND VANZETTI (1985).

46 By prior arrangement with the prosecution a ballistics expert for the state, Captain William Proctor of the Massachusetts State Police, testified that one of the fatal bullets was "consistent with" having been fired from Sacco's pistol. This evidence was intentionally designed to mislead the jury into thinking that Sacco's gun had been the murder weapon. The testimony was fabricated after Proctor told the prosecution that all he could honestly say was that the bullet might have come from any one of thousands of similar Colt pistols. *See* L. JOUGHIN & E. MORGAN, *supra* note 45, at 14-16, 126-31. William Young and David Kaiser have argued that a great deal of the prosection's evidence was knowingly falsified to "frame" Sacco and Vanzetti. *See* W. YOUNG & D. KAISER, *supra* note 45 *passim*.

47 Jury foreman Harry Ripley declared to an acquaintance before the trial, "Damn them, they ought to hang them anyway." *Quoted in* L. JOUGHIN & E. MORGAN, *supra* note 45, at 116.

intensely conservative *Boston Herald* was eventually moved to publish an editorial, later awarded a Pulitzer Prize, in which it argued that there were doubts about the integrity of the original trial.[48] In response to such sentiments the Governor eventually appointed an Advisory Commission to review the case. Unfortunately, its deliberations were no freer from prejudice than those of the trial court and the men were condemned. But these tergiversations demonstrate that Massachusetts was locked in a struggle with its conscience. Although the state yielded to prejudice and executed the defendants, the case served as a rallying point for those who opposed the prevailing ideology and demonstrated the moral vulnerability of that ideology. Vanzetti prophetically described his role as martyr in the cause of justice:

> If it had not been for these things, I might have live out my life talking at street corners to scorning men. I might have die, unmarked, unknown, a failure. Now we are not a failure. This is our career and our triumph. Never in the our full life can we hope to do such work for tolerance, for joostice, for man's onderstanding of man, as we do now by an accident.
>
> Our words—our lives—our pains—nothing! The taking of our lives—lives of a good Shoemaker and a poor fish-peddler—all! That last moment belong to us—that agony is our triumph![49]

The case not only illustrates the ability of courts, lawyers and jurors to act brutally and unfairly, but also the ability of various constituencies to challenge such actions. A study of the trial of Sacco and Vanzetti may help young lawyers to focus on the conflict between what society seems to demand and the dictates of conscience.[50]

Similar benefits may be derived from a study of the prosecution of the so-called Scottsboro "boys." In 1932 an armed posse removed nine young black men from a freight train passing through northern Alabama.[51] They were arrested because a white

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48 *Id.* at 248 (the editorial, entitled *We Submit*, was written by F. Lauriston Bullard and was the *Heralds*'s response to Judge Thayer's October 23, 1926 denial of the defendants' motion for a new trial).

49 *Quoted in* D. FELIX, PROTEST: SACCO-VANZETTI AND THE INTELLECTUALS 178 (1965).

50 Despite the foregoing, it should not be concluded that the men were beyond all doubt, innocent. There is substantial circumstantial evidence of Sacco's guilt. *See* F. RUSSELL, *supra* note 45, at 463-67; *see generally* F. RUSSELL, SACCO AND VANZETTI: THE CASE RESOLVED (1986). What is unavoidable, nonetheless, is the grotesquely unfair manner in which they were tried and condemned.

51 The description of the Scottsboro "boys" is based upon the following sources:

youth had complained about being beaten and forced from the train. When the train was stopped it was discovered that two young white women were also aboard. Shortly thereafter, the young women accused the black "boys" of rape. After narrowly escaping a lynching, the accused were hastily put on trial in Scottsboro, Alabama. The "boys" were provided no counsel until the day of the trial and the lawyers who eventually represented them were hampered by a variety of impediments including the constant threat of mob violence and severe personal disabilities.[52] The trials were concluded in the span of three days and the defendants were condemned to death. The Alabama Supreme Court upheld their convictions with only a single judge dissenting.[53] It was not until the case reached the Supreme Court of the United States that any judicial body was moved to declare their treatment unfair.

The Supreme Court reversed the convictions and sent the case back to Alabama for a new trial.[54] Over the course of the next four years there were a series of seven trials and a second reversal of convictions by the Supreme Court.[55] At all of these trials, one of the two alleged rape victims testified on behalf of the defendants that there had been no rape. Furthermore, strong medical evidence was adduced that the women's condition was inconsistent with there having been a violent assault and that several of the defendants were physically incapable of carrying out a rape. Not once, however, did an Alabama jury acquit any of the defendants. Eventually the case was settled with a compromise that resulted in the freeing of four of the nine "boys." As with Sacco and Vanzetti, the case demonstrates the willingness of a prejudiced and hostile majority to act unjustly. And, like its Massachusetts counterpart, the Scottsboro litigation served as a rallying point for those who recognized the vicious nature of the racial animus that dictated the trial results. The case was one of the first rays of light in the otherwise dark sky of Southern racism and presaged the beginning of the civil rights movement.

Norris v. Alabama, 294 U.S. 587 (1935); Powell v. Alabama, 287 U.S. 45 (1932); D. CARTER, SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH (1969).

52 It has been demonstrated that one of the attorneys, Stephen Roddy, had a serious drinking problem and the other, Milo Moody, was becoming senile. *See* D. CARTER, *supra* note 51, at 18-19.

53 *See* Powell v. State, 224 Ala. 540, 144 So. 201 (1932).

54 *See* Powell v. Alabama, 287 U.S. 45 (1932).

55 *See* Norris v. Alabama, 294 U.S. 587 (1935).

These cases, and others like them,[56] expose to scrutiny the dialectical struggle that may take place in society when its strongest prejudices come squarely into conflict with its promise to treat all defendants in an evenhanded and fair manner. They also seem to define a boundary beyond which legal action should not be pressed. Transgressing this boundary invites sharp protest and kindles efforts to restore judicial integrity. This pattern of transgression and subsequent restraint is similar to that observed by Isaac Balbus concerning judicial behavior during the urban riots of the late 1960s.[57] Balbus found that under the immediate pressure of civil disorders the courts seemed to abandon due process. Once some semblance of order had been restored, however, he observed that the courts once more began to insist on the rigorous enforcement of procedural protections. Balbus argued that this pattern manifests the ruling elite's concern to maintain both its grip on power and the appearance of the rule of law, a necessity to insure the long term legitimacy of the court system.

The satanic cases follow a similar pattern. For a variety of social, economic and political reasons the courts at times seem to lose their senses. Prejudice, fear, and anger overrule decency and fairness. This pattern cannot continue unchecked if the system is to retain the respect and support of society at large. Protests increase and eventually the system disavows its prior behavior. Quite often, as in both Sacco-Vanzetti and Scottsboro, this disavowal comes too late for the original victims who, in essence, serve as martyrs to the cause of restoring justice.

Studying the satanic cases may yield a variety of benefits. Foremost among them is the opportunity to examine, face to face, the demonic tendencies of the law. When such tendencies are openly confronted, students may begin to identify the critical moral issues arising out of the practice of their profession. In such cases the risk of doing harm is made graphically clear yet, as Noonan points out, the historical nature of the materials provide

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56 *See, e.g.*, P. AVRICH, THE HAYMARKET TRAGEDY (1984) (describing injustice of prosecution of so-called "Haymarket Bombers," Chicago anarchist labor leaders accused of a bombing murder in 1886); R. RADOSH & J. MILTON, THE ROSENBERG FILE: A SEARCH FOR THE TRUTH (1983) (detailing misconduct in prosecution of Julius and Ethel Rosenberg in 1951). Alternatively, it would be possible to construct a course around other historically infamous trails like those of Socrates, Jesus, and Thomas More.

57 *See* I. BALBUS, THE DIALECTICS OF LEGAL REPRESSION: BLACK REBELS BEFORE THE AMERICAN CRIMINAL COURTS (1973). The following analysis is based upon Balbus's work unless otherwise noted.

sufficient distance so that the temptation to "disguise, rationalize, or accommodate" is diminished.[58] In such a setting students may come to realize that practice is fraught with personal decisions that require deep thought about values. When young lawyers realize that they will have to face hatred, prejudice, and stupidity, their own as well as others, they are at least forewarned about the problems they may face and afforded an opportunity to prepare to meet them. Furthermore, understanding that there are judges like Webster Thayer provides a profound caution and perhaps arms young lawyers to deal more effectively with the demands authority will seek to make upon them.

If the materials studied are carefully selected the students may also find role models worthy of emulation. William Thompson's great integrity and tenacity in representing Sacco and Vanzetti, despite the severe damage the case did to his practice and standing in Boston's legal community,[59] provides a model of attorney fortitude and courage. The willingness of Samuel Liebowitz to face a howling mob and ignore threats to his life while seeking justice for the Scottsboro "boys"[60] is similarly inspiring. Even in the most awful circumstances some heroic men and women have demonstrated a willingness to stand up and fight for justice. Their example is a precious lesson to communicate to young lawyers. It may also serve as a link between outstanding lawyers and altruists of other sorts who, throughout history, have risked everything to do what they think is right. It connects the practice of law with the samaritanism exhibited by people like Andre Trocmé,[61] Georges Picquart,[62] and Oscar Schindler.[63]

The satanic cases may be used to teach a host of other lessons as well. They dramatically present all sorts of ethical dilemmas from prosecutorial overreaching and judicial misconduct to

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58 *See supra* text preceding note 19 (quoting J. NOONAN, *supra* note 10, at 38).

59 *See* L. JOUGHIN & E. MORGAN, *supra* note 45, at 319-20, 354-56.

60 *See* D. CARTER, *supra* note 51 *passim*.

61 *See* P. HALLE, LEST INNOCENT BLOOD BE SHED: THE STORY OF THE VILLAGE OF LE CHAMBON AND HOW GOODNESS HAPPENED THERE (1979) (Trocmé was the minister and leader of the small town of Le Chambon and under his guidance the town became a haven for Jews fleeing the Nazis).

62 *See* J.-D. BREDIN, *supra* note 44 *passim* (Lieutenant Colonel Picquart was a French Army officer who risked a very promising career to fight the unjust conviction of Alfred Dreyfus).

63 *See* T. KENEALLY, SCHINDLER'S LIST 1 (1982) (Schindler was a German industrialist who risked all he had in an effort to save Jews from the holocaust).

defense counsel subornation of perjury. They provide real-world motives for such behavior and underscore the difficulty of choosing to act ethically. Cases like Sacco-Vanzetti and Scottsboro also raise profound questions about the validity of the death penalty. When the state can execute on the basis of grotesquely unfair proceedings the danger implicit in every death sentence becomes readily apparent. The irreconcilability of an intrinsically vulnerable justice system and an irreversible sanction is plainly intimated.[64]

These sorts of cases also provide exceptional vehicles for the rehearsal of certain advocacy skills. In the context of a rich set of factual materials, such as those provided by a good case study, young lawyers can begin to explore ways to fashion a sound and appealing theory of the case.[65] Classroom discussion of this intensely practical problem has the added advantage of emphasizing for student lawyers that good advocacy requires profoundly human and creative thinking as well as legal acumen. The materials help expose the trial as a problem in intepersonal communications. A technically correct voir dire, opening, and cross-examination are not enough to win cases. Common sense and persuasion are the essence of the matter.

It is hard to measure the impact of these cases on young lawyers. When I last taught a course focusing on the sort of cases I have described,[66] I asked my students to write a brief description of what impact, if any, the course had on their thinking about being lawyers, about the role of judges in the adjudicatory system, about the problem of achieving justice. I got a range of replies. One student candidly acknowledged that the course "honestly had no effect on either [his/her] frame of reference, morality or ethics."[67] At least half a dozen, however, felt that the

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64 *See* C. BLACK, CAPITAL PUNISHMENT, THE INEVITABILITY OF CAPRICE AND MISTAKE (1974).

65 On the importance of the theory of the case, see Imwinkelried, *The Development of Professional Judgment in Law School Litigation Courses: The Concepts of Trial Theory and Theme*, 39 VAND. L. REV. 59 (1986).

66 My course is entitled "When Justice Fails." It is offered for three semester hours of credit. It is generally taken by second semester first-year students though it is open to upper-level students as well. The class usually has 40 to 50 enrollees. It begins with a set of theoretical materials including excerpts from I. BALBUS, *supra* note 57; E.P. THOMPSON, WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT (1975) and my monograph concerning the adversary system, S. LANDSMAN, THE ADVERSARY SYSTEM: A DESCRIPTION AND DEFENSE (1984). It then explores four famous miscarriages of justice. In this year's class I used the following: L. JOUGHIN & E. MORGAN, *supra* note 45; R. CARTER, *supra* note 51; R. RADOSH & J. MILTON, *supra* note 56; and J.-D. BREDIN, *supra* note 44.

67 Original responses on file with the author.

course had shown them "how fragile the system really is."[68] A majority said they had begun to examine more critically the parts played by both lawyers and judges. A somewhat smaller number[69] said they had begun to see the importance of moral and ethical constraints on all the actors in the process and had become sensitized to "the disasters which occur when the players [do] not act ethically." Some went a step further and indicated that they had "become aware that our best safeguard against such failure is vigilance, our own ethical conduct, and constant concern for our fellow human beings." These responses are not overwhelming proof of the efficacy of the study of satanic cases but they do suggest that the consideration of such materials can spark student examination of some critically important issues that are generally not addressed in the law school curriculum.

68 The numerical calculations presented in this and the following sentences were based on the 29 responses I received from my class of 40 students. It should be noted that at least half of those not responding were absent when the questions were asked.

69 Approximately 12 of my 29 student respondents so indicated.